

**State of California
California Environmental Protection Agency
AIR RESOURCES BOARD**

**PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE PORTABLE FUEL
CONTAINER REGULATIONS**

FINAL STATEMENT OF REASONS

July 2006

State of California
California Environmental Protection Agency
AIR RESOURCES BOARD

**Final Statement of Reasons for Rulemaking,
Including Summary of Comments and Agency Response**

PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE PORTABLE FUEL
CONTAINER REGULATIONS

Public Hearing Date: September 15, 2005
Agenda Item No.: 05-8-7

I. General

The Staff Report: Initial Statement of Reasons for Rulemaking ("Staff Report"), entitled "Initial Statement of Reasons for Proposed Amendments to the Portable Fuel Container Regulations," released July 29, 2005, is incorporated by reference herein.

In the portion of the rulemaking covered by this Final Statement of Reasons, the Air Resources Board (Board or ARB) is adopting amendments to the Portable Fuel Container (PFC) regulations. During its September 15, 2005 public hearing, the Board adopted staff's recommendation to bifurcate this rulemaking into two components, and to adopt two Resolutions for this rulemaking. As detailed in the staff report and in staff's presentation before the Board, the first component of this rulemaking consists of amendments specifying that kerosene containers and utility jugs (large capacity plastic containers) used to store and dispense fuel and kerosene are subject to the Portable Fuel Container (PFC) regulations. The amendments within the first component of this rulemaking were fully explained in a Final Statement of Reasons issued in October 2005, and contained in amendments to title 13, California Code of Regulations (CCR) subsection 2467(a) and 2467.1(a)(12), (17) and (18), along with new subsection 2467.1(a)(6). OAL approved the amendments and filed them with the Secretary of State on January 13, 2006, and the amendments took effect on February 12, 2006.

This Final Statement of Reasons only addresses those amendments within the second component of the rulemaking, which consist of the following primary elements:

Establishing a certification program and certification criteria for portable fuel containers, spouts, or portable fuel containers and spouts. Any portable fuel container, spout, or portable fuel container and spout produced on or after July 1, 2007 that is manufactured for sale, advertised for sale, sold, or offered for sale in California, or that is introduced, delivered or imported into California for introduction into commerce must be certified by the ARB. ARB will certify only those portable fuel containers, spouts, or portable fuel containers and spouts

that comply with the specified certification criteria and procedures.

Amending the existing performance standards to eliminate the automatic shutoff performance standard effective July 1, 2007.

Amending existing performance standards and associated test methods to eliminate the fill height and flow rate performance standards, effective 30 days after these amendments are filed with the Secretary of State. Test Method 510 will be amended to eliminate the test procedures and criteria applicable to the fill height performance standard, and Test Method 512, which specifies the test procedures and criteria applicable to the fuel flow rate performance standard, will be eliminated.

Amending the existing portable fuel container pressure standard presently set forth in Test Method 511 as 10 pounds per square inch gauge (psig) to 5 psig, effective July 1, 2007.

Amending Test Methods 510 and 511 by replacing them with Test Procedure TP-501 effective July 1, 2007. Test Method 512 will be eliminated.

Establishing a voluntary consumer acceptance-labeling program that allows participating manufacturers to label their portable fuel containers with an ARB "Star Rating" indicating how consumers rate their products' ease of use.

Amending the evaporation requirement and permeation standard and test method by combining the currently separate evaporation requirement and permeation standard and test method into a single diurnal standard and test method effective July 1, 2007. Test Method 511 presently sets forth the evaporation requirements [automatic closure and fuel container pressure requirements], and Test Method 513 presently sets forth the procedures for determining permeation rates. Test Method 513 will be replaced by a new test procedure TP-502, that specifies the diurnal standard and associated test method effective July 1, 2007.

On July 29, 2005, ARB published a notice for a September 15, 2005 public hearing to consider the proposed amendments. The Staff Report was also made available for public review and comment starting July 29, 2005. The Staff Report provides the rationale for the proposed amendments. The text of the proposed amendments to title 13, CCR was included as an Appendix to the Staff Report. These documents were also posted on the ARB's Internet site for the rulemaking at: <http://www.arb.ca.gov/regact/pfc/2005/pfc2005.htm>.

On September 15, 2005, the Board conducted the public hearing and received written and oral comments. At the conclusion of the hearing, the Board adopted Resolution 05-54, in which it approved the originally proposed amendments with the

following significant modifications:

- (1) adding a definition of the term “automatic closure,”
- (2) adding a definition of “automatically close,”
- (3) modifying the definition of the term “spout” to allow for spout extensions (funnels) by clarifying that the regulation does not apply to funnels,
- (4) clarifying that portable fuel containers differing only in color may be considered for certification as a single product family,
- (5) clarifying that portable fuel container manufacturers need only provide a list of specific equipment types that their products are specifically not intended to fuel, instead of a list of specific equipment types that their products may be used to refuel,
- (6) modifying Table 2-1 of Certification Procedure CP-501 to clarify that the automatic closure requirement requires a spill-proof system or spill-proof spout to close and seal when it is not dispensing fuel, instead of when the spill-proof system or spill-proof spout is removed from the tank,
- (7) clarifying that a portable fuel container manufacturer is not required to recertify its products if it uses a different vendor for a previously certified component, provided that component does not differ in design or material specifications from the previously certified component,
- (8) clarifying in Test Procedure 501 that in conducting the automatic closure test, after water has been dispensed until the tip of the spill-proof spout is immersed in water, the portable fuel container’s automatic closure feature must be engaged before the container is removed from the test fixture. It is no longer necessary to lift the container before engaging the automatic closure feature, and
- (9) clarifying in Test Procedure 502 that a trip blank is required when preconditioning a portable fuel container at elevated temperatures.

These modifications had been suggested by staff in a three-page document entitled “Staff’s Suggested Modifications to Original Proposal” that was distributed at the hearing and was Attachment C to Resolution 05-54. Attachment C showed excerpts of the originally proposed amendments to the regulations and incorporated documents, with the text of all suggested modifications clearly identified. In accordance with section 11346.8 of the Government Code, the Resolution directed the Executive Officer to incorporate the modifications into the proposed regulatory text, with such other conforming modifications as may be appropriate, and to make the modified text available for a supplemental comment period of at least 15 days. She was then directed either to adopt the amendments with such additional modifications as may be appropriate in light of the comments received, or to present the regulations to the Board for further consideration if warranted in light of the comments.

The text of all of the modifications to the originally proposed amendments to the regulations and incorporated documents, and additional proposed conforming modifications to section 8 of Test Procedure 502 (in addition to those modifications to

section 8 previously identified in Attachment C to Resolution 05-54) was made available for a supplemental 15-day comment period by issuance of a "Notice of Public Availability of Modified Text." This Notice, a copy of the Resolution 05-54 and the Attachment C document entitled "Staff's Suggested Modifications to Original Proposal," and staff's Proposed Additional Modifications to Test Procedure TP-502, "Test Procedure for Determining Emissions from Portable Fuel Containers," were mailed on April 5, 2006 to all parties identified in section 44(a), title 1, CCR, and to other persons generally interested in the ARB's rulemaking concerning portable fuel container regulations. The "Notice of Public Availability of Modified Text" listed the ARB internet site from which interested parties could obtain the complete texts of the incorporated documents which would be affected by the modifications to the original proposal, with all of the modifications clearly indicated.

No comments were received during the supplemental comment period that ran from April 6 through 21, 2006.

This Final Statement of Reasons contains a summary of the comments received by the Board on the proposed regulatory amendments within the second component of the rulemaking and ARB's responses to those comments.

Incorporation of Test Procedures. Four documents are incorporated directly in title 13, CCR sections 2467.2(d), 2467.4(b), 2467.7(a), 2467.7(b), and 2467.8(a). Certification Procedure CP-501 in turn incorporates ARB test procedures TP-501 and TP-502 and two specifications of the American Society for Testing and Materials Standards (ASTM) and a United States Environmental Protection Agency (U.S. EPA) Test Method (Method 301).

Title 13, CCR sections 2467.2(d), 2467.4(b), 2467.7(a), 2467.7(b), and 2467.8(a) and CP-501 identify the incorporated ARB documents by title and date. The ARB documents are readily available from ARB upon request and were made available in the context of this rulemaking in the manner specified in Government Code section 11346.5(b). The ASTM specifications are published by the American Society for Testing and Materials Standards and are therefore reasonably available to the affected public from a commonly known source. U.S. EPA Test Method 301 is contained in Appendix A to 40 CFR Part 63; the CFR is published by the Office of the Federal Registrar, National Archives and Records Administration, and is therefore reasonably available to the affected public from a commonly known source.

The test procedures and new Certification Procedure CP-501 are incorporated by reference because it would be impractical to print them in the CCR. Existing ARB administrative practice has been to incorporate test procedures by reference into the CCR instead of printing them in the CCR because the procedures are highly technical and complex. They include protocols and specifications for test equipment required for testing of portable fuel containers and spouts and have a very limited audience. Because ARB has never printed complete test procedures in the CCR, the affected

public is accustomed to the incorporation by reference format. The ARB's test procedures and Certification Procedure CP-501 as a whole are extensive and it would be both cumbersome and expensive to print these lengthy, technically complex procedures with a limited audience in the CCR. Printing portions of the ARB test procedures that are incorporated by reference would unnecessarily confuse the public.

The certification procedure incorporates ASTM specifications because these specifications are widely available to manufacturers and are recognized by the industry as establishing reliable criteria. The procedure also incorporates U.S. EPA Method 301 because it has been widely used by U.S. EPA, ARB, and industry to determine the bias and precision of test methods, and to determine if a proposed alternative test method can be used in lieu of a specified test method. Each of the ASTM specifications and U.S. EPA. Test Method is identified by date in the ARB certification procedure.

Fiscal Impacts. The Board has determined that this regulatory action will not create costs or savings, as defined in Government Code section 11346.5(a)(6), to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to part 7 (commencing with section 17500), Division 4, title 2 of the Government Code, or other nondiscretionary costs or savings to state or local agencies.

The Executive Officer has determined that this regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that this amendment will not affect the creation or elimination of jobs within the State of California, the creation of new businesses and the elimination of existing businesses within the State of California, and the expansion of businesses currently doing business within the State of California.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements in the regulations and incorporated documents that apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

The Board has further determined that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulatory action was proposed or would be as effective and less burdensome to affected private persons or businesses than the action taken by the Board.

II. Summary of Comments and Agency Response

List of Comments Received (written comments unless otherwise noted)

STAKEHOLDER	AUTHOR
Portable Fuel Container Manufacturers Association	Phil Monckton (oral)
DSD International	Written

1. Comments by Portable Fuel Container Manufacturers Association

The Portable Fuel Container Manufacturers Association (PFCMA) supports the regulatory amendments. The PFCMA is comprised of four primary PFC manufacturers and a group of smelt manufacturers as well. The PCFMA believes the amendments will allow the development of products that will avoid problems associated with current products, that are more intuitive and easy to use for consumers, and that will ultimately lead to emission reductions.

Response

We appreciate the comments in support of the amendments. Over a two year period, staff worked with the PFCMA and performed numerous internal studies to examine consumer complaints associated with current spill-proof spouts. The primary causes of complaints were identified as non-intuitive designs and incompatibility issues resulting from current performance standards. Staff concurs that by amending the performance standards and developing streamlined test procedures, manufacturers will be able to develop consumer friendly products that will work with the vast types of gasoline powered equipment that exist.

2. Comments by DSD International

a. Modification of the existing regulations to improve spillage control

DSD states that in most cases, when current portable fuel containers work, they prevent overfilling of fuel tanks and significantly reduce overflow.

Response

No change was made in response to this comment. The statement that current portable fuel containers largely prevent overfilling of fuel tanks and significantly reduce overflow is contrary to staff's findings. As discussed in the Staff Report, shortly after the present portable fuel container regulations were adopted, customers began complaining about spillage from PFCs and incompatibility issues resulting from the automatic shutoff feature. In researching such complaints staff learned that 32 of respondents surveyed expressed frustration

with using compliant PFCs and reported problems with spillage or usage.

b. The consumer acceptance program should be mandatory

DSD suggests implementing a mandatory consumer acceptance program that is “carried out by qualified technicians according to the manufacturer’s instructions.” DSD also suggests that the consumer acceptance tests must include the most frequently used machinery, which DSD estimates include: lawn mowers, hedge trimmers and brush cutters, marine engines less than 100 hp, chain saws, leaf blower/vacuums, off-road motorcycles, generators, tillers, and all-terrain vehicles.

Response

No change was made in response to this comment. As determined in a consumer focus group conducted by a third party consultant, untrained consumers experience great difficulty using automatic shutoff spouts, and training such consumers in properly using such spouts is impractical. Also, given the large number of non-standardized fuel tanks and varying consumer experience levels, we believe that eliminating the automatic shutoff requirement will promote intuitive spouts that reduce spillage. Although a consumer acceptance program is helpful in addressing consumer behavior and spillage, most manufacturers agree that mandating such a requirement will not address all issues. The alternative, the voluntary consumer acceptance program proposed in the amendments, is supported by staff and other manufacturers since it encourages manufacturers to consider the “consumer friendly” aspect of their products without mandating unfeasible requirements.

c. The certification program for PFCs should require ULC certification for all parts used during the fabrication or for the product as a whole.

Response

No change was made in response to this comment. DSD did not clearly specify what entity it references by the “ULC” acronym, but ARB is fairly confident DSD is referring to the Underwriters’ Laboratories of Canada. The proposed certification procedure CP-501 does not specify that only one entity must conduct the tests contained in test procedures TP-501 and TP-502, but provides manufacturers the flexibility to use any accredited independent test laboratory (a laboratory that is not owned, operated or affiliated with the manufacturer). CP-501 is designed to insure that portable fuel containers, spouts, or both portable fuel containers and spouts (and by implication all parts used in said portable fuel containers or spouts) will comply with the criteria specified in CP-501, TP-501 and TP-502.

d. The new diurnal emission standard will only work if the regulation is respected

Response

No change was made in response to this comment. ARB believes that this rulemaking contains sufficient safeguards to insure that manufacturers will comply with the new diurnal emission standard. First, compliance with this standard (as determined by testing conducted in compliance with TP-502) is required as a condition of obtaining certification under CP-501. Second, ARB will continue to monitor the compliance of PFCs and spouts and both PFCs and spouts in the field.

e. Adopt new PFC test procedures to streamline testing

"It is not clear, if you had any safety control regarding the possibility of spout use with the gaskets either in the wrong place, lost or damaged. By having all material ULC approved you will improve both quality and consumer acceptance."

Response

No change was made in response to this comment. ARB believes that DSD's concerns regarding improperly installed or missing gaskets are adequately addressed in this rulemaking because such defects will likely cause a PFC, spout, or both PFC and spout to fail the testing requirements specified in TP-501 and TP-502, and therefore cannot be certified for sale in the State.

f. Portable fuel containers should be easy and safe to use

DSD maintains that PFCs should be consumer friendly, and has communicated to staff that it opposes the proposed elimination of the current automatic shutoff requirement specified in TM 510.

Response

No change was made in response to this comment. ARB believes that the proposed amendments will help PFCs be more consumer friendly. ARB's response to eliminating the automatic shutoff requirement is set forth in section 7.2 of the Staff Report.